

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

THE CENTRAL TRUST BANK,

Respondent,

v.

WILLIAM GRAVES,

Appellant.

DOCKET NUMBER WD78757

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 2, 2016

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Judge

JUDGES

Division Two: Mitchell, P.J., and Martin and Witt, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

THE CENTRAL TRUST BANK,)
)
 Respondent,)
 v.) **OPINION FILED:**
) **August 2, 2016**
 WILLIAM GRAVES,)
)
 Appellant.)

WD78757

Cole County

Before Division Two Judges: Karen King Mitchell, Presiding Judge, and Cynthia L. Martin and Gary D. Witt, Judges

William Graves appeals from the trial court's denial of his motion to dismiss or stay the litigation and compel arbitration with Central Trust Bank (Central), his former employer. Graves argues that Central is bound by the mandatory arbitration provision of Graves's employment contract with IFC Holdings, Inc. (INVEST), either as a third-party beneficiary of that contract or by the doctrine of equitable estoppel.

AFFIRMED.

Division Two holds:

1. Missouri contract law applies to determine whether the parties have entered a valid agreement to arbitrate. Whether the trial court should have granted a motion to compel arbitration is a question of law that we review de novo.
2. Arbitration is strictly a matter of contract; if the parties have not agreed to arbitrate, the courts have no authority to mandate that they do so.
3. A nonsignatory attempting to bind a signatory to an arbitration agreement is distinct from a signatory attempting to bind a nonsignatory.

4. In cases where nonsignatories have sought to bind signatories to an arbitration agreement, courts have enforced the arbitration agreements because the signatories had entered into written arbitration agreements, albeit with the affiliates of those parties asserting the arbitration and not the parties themselves, and were thereby estopped from denying the agreement's existence.
5. But where a willing signatory seeks to arbitrate with a nonsignatory that is unwilling, the signatory must establish at least one of the following five theories: (1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; or (5) estoppel.
6. Mere status as a third-party beneficiary, alone, is not sufficient to support binding an unwilling nonsignatory to an arbitration agreement. Even if a party is a third-party beneficiary of an agreement containing an arbitration provision, the third-party must still manifest some agreement to arbitrate or otherwise be bound (e.g., through any of the five theories identified above) before a signatory may bind the third-party beneficiary.
7. To be bound as a third-party beneficiary, the terms of the contract must clearly express intent to benefit that party or an identifiable class of which the party is a member.
8. In cases where the contract lacks an express declaration of that intent, there is a strong presumption that the third party is not a beneficiary and that the parties contracted to benefit only themselves.
9. A mere incidental benefit to the third party is insufficient to bind that party.
10. Third-party beneficiary status depends not so much on a desire or purpose to confer a benefit on the third person, but rather on an intent that the promisor assume a direct obligation to him.
11. Here, even if status as a third-party beneficiary, alone, were sufficient to bind a nonsignatory to arbitrate, Graves failed to prove that Central held that status.
12. By accepting benefits, a party may be estopped from questioning the existence, validity, and effect of a contract.
13. Mere indirect benefits are not sufficient to establish estoppel because the nonsignatory is benefitting from the *contractual relationship* of those who are indeed parties to the contract, rather than benefitting from the contract, itself.
14. Here, though Central incidentally benefitted from Graves's ability to sell and market securities, the receipt of indirect benefits is insufficient to estop a party from denying an agreement to arbitrate.

Opinion by: Karen King Mitchell, Presiding Judge

August 2, 2016

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